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No. 80-1947

In the Supreme Court of the United States

OCTOBER TERM, 1980

MOBILE COMPONENTS, INC., a corporation
Petitioner

v.

VERLEE C. LAYON, Executrix of the Estate of THOMAS LAYON, SR., Deceased
Respondent

Consolidated With

FIRST NATIONAL BANK OF TULSA, et al.,
Petitioner

v.

VERLEE C. LAYON, Executrix of the Estate of THOMAS LAYON, SR., Deceased
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

WESLEY R. THOMPSON
THOMAS A. LAYON
15 South Park
Sapulpa, Oklahoma 74066
(918) 224-7330
Attorneys for Respondent
Verlee C. Layon

Cone-Lewis Printing Co. • 323 E. 3rd • Tulsa, Okla. 74120 • Phone (918) 582-1234

QUESTION PRESENTED

Whether the United States Supreme Court has jurisdiction under 28 U.S.C. §1257 and other established jurisdictional procedures to review this case and the issues involved herein.

The parent corporation of First National Bank of Tulsa is First Tulsa Bank Corporation, Inc. The three remaining Petitioners (The Outrigger, Inc., Planned Residential Communities Construction Company of Oklahoma, Inc., Hamilton Investment Trust, a voluntary business association of Massachusetts) have no parent companies, subsidiaries, or affiliates. Supreme Court Rule 28(1).

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

JURISDICTION

Petitioners seek to invoke the jurisdiction of this Court under the provisions of 28 U.S.C. §1257(3).

ARGUMENTS

I.

The decision of the Oklahoma Supreme Court was not a final judgment as required by 28 U.S.C. §1257.

This case came before the Oklahoma Supreme Court on an appeal from the trial court's order granting Petitioner's pretrial motion for summary judgment. The Oklahoma Supreme Court reversed that order and remanded the case for proceedings on the merits.[1] There has been no final judgment entered in this case.

Since 1789,[2] Congress has granted this Court the power to review decisions of a state court only in those instances where the highest state court has entered a final judgment or decree. *Houston v. Moore,* 16 U.S. 433, 4 L.Ed. 428 (1818); *Davis v. Packard,* 31 U.S. 41, 8 L.Ed. 312 (1832); *Radio Station WOW, Inc. v. Johnson,* 326 U.S. 120, 47 S.Ct. 1475, 89 L.Ed.2d 2092 (1945).

The policies supporting this finality rule have been cited in numerous decisions by this court and were perhaps best articulated by Mr. Justice Frankfurter in his opinion for this Court in *Radio Station WOW, Inc. v. Johnson,* supra at 124, wherein he wrote:

> This requirement has the support of considerations generally applicable to good judicial administration. It avoids the mischief of economic waste and of delayed justice. Only in very few situations

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[1] *Mobile Components v. Layon,* 653 P.2d 591 (1980)

[2] Judiciary Act of 1789, 1 Stat. 73, §25 (1789)

> where intermediate rulings may carry serious public consequences, has there been a departure from this requirement of finality for federal appellate jurisdiction. *This prerequisite to review derives added force when the jurisdiction of this Court is invoked to upset the decision of a State court.* Here we are in the realm of potential conflict between the courts of two different governments. . . . This requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system. (Emphasis added).

Mr. Justice Frankfurter elaborated on these policy arguments in *Republic Gas Co. v. Oklahoma,* 334 U.S. 62, 67, 68 S.Ct. 972, 2 L.Ed.2d 1212 (1948), wherein he wrote for that Court:

> This prerequisite for the exercise of appellate powers in this Court is especially pertinent when a constitutional barrier is asserted against a State Court's decision on matters particularly of local concern. Close observance of this limitation upon the court is not regard for a strangling technicality. History bears ample testimony that it is an important factor in securing harmonious State-federal relations.

In the present case, the Petitioners request that this Court prematurally interfere with and reverse a decision of the Oklahoma Supreme Court that this case should be remanded to the trial court for further proceedings on the merits. In addition, the Petitioners have repeatedly pointed out in their arguments the local nature of the particular controversy involved. They have gone to great

lengths to distinguish the characteristics of the Oklahoma statutory scheme from those of other jurisdictions, thus rendering any decision by this Court on this issue predominently local in nature.

As important as the requirement for finality may be, this Court has recognized the necessity of giving the rule a pragmatic rather than a mechanical application. *Radio Station WOW,* supra at 124. This has resulted in a number of exceptions being carved from a strict adherence by this Court to the finality rule in order to more effectively serve the needs of justice and judicial economy.

In *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975), this Court summarized the exceptions to the finality rule and divided them into four specific categories:

1. Where, for one reason or another, the federal issue decided by the state court is conclusive of the litigation, or where the outcome of further proceedings is preordained. *Mills v. Alabama,* 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966); *New York v. Cathedral Academy,* 434 U.S. 125, 98 S.Ct. 340, 54 L.Ed.2d 346 (1977).

2. Where the federal question will survive and require decision regardless of the outcome of further proceedings. *Radio Station WOW, Inc. v. Johnson,* supra; *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

3. Where later review of the federal question involved cannot be had by this Court regardless of the out-

come of any further proceedings. *California v. Stewart,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.,* 414 U.S. 156, 94 S.Ct. 407, 38 L.Ed.2d 379 (1973).

4. Where the parties seeking review could win the case on remand on non-federal grounds and thereby deny this Court an opportunity to answer an important and unsettled federal question, or where postponing review of the case would seriously jeopardize an important national policy or cast a shadow over an important and established constitutional right. *Construction Laborers v. Curry,* 371 U.S. 542, 83 S.Ct. 531, 9 L.Ed.2d 514 (1963). *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974).

The Petitioner herein acknowledges that the decision of the Oklahoma Supreme court is not a final judgment as required by §1257, but requests that this court recognize it as fitting into one of the exceptions recognized by the *Cox* court.[3] However, an examination of Petitioner's claims together with the facts of this case reveal that it will not fit into any of the recognized exceptions to the finality rule.

1. The decision of the federal issue by the Oklahoma Supreme Court is not conclusive of the litigation, nor is the outcome of any further proceedings preordained as a result of that decision. Petitioners reliance on *New York v. Cathedral Academy,* 434 U.S. 125, 98 S.Ct. 340, 54 L.Ed.2d 346 (1977), is misplaced. In that case, the New York Court of Appeals had reversed a lower

[3] *See,* Petition For Writ of Certiorari, Note 2 at 2, *Mobile v. Layon,* 653 P.2d 591 (1980)

apellate court's finding that a state law allowing the state government to reimburse non-profit private schools for certain expenditures was unconstitutional as being in violation of the First and Fourteenth Amendments of the federal constitution. The Court of Appeals remanded the case to the trial court for an audit to determine the amount owed the private school. The State appealed that decision to this Court. This Court granted the interim review on the grounds that the decision by the Court of Appeals on the federal issue was conclusive of the litigation and that "further proceedings cannot remove or otherwise affect this threshold federal issue. . . " Id., Note 4 at 128.

By comparison, the decision of the Oklahoma Supreme Court on the federal issue herein is not conclusive of the litigation. The Petitioners have detailed several non-federal defenses available to them in their original Answer to the Petition to Foreclose on the liens involved herein. These defenses are still available to the Petitioner in a trial on the merits on remand.[4] The decision of the Oklahoma Supreme Court does not make the outcome of any further litigation preordained but is "merely controlling the nature and character of . . . the state proceedings still to come." *Cox Broadcasting Corp.*, supra at 482.

2. The federal issue involved in this case will not necessarily survive no matter the outcome of any further

[4] The Oklahoma Supreme Court indicated in their opinion that "[W]e do not determine now if the trial court erred by allowing the description amendment to the lien statement, or by allowing one lien statement to suffice for two noncontiguous tracts of land." *Mobile Components v. Layon*, 653 P.2d at 592. Presumably, these defenses would still be available to Petitioners at the proceedings on remand.

state proceedings. The Petitioner could win this case on the merits on remand and preclude the necessity of any decision by this Court on the federal question. This Court has long adhered to the principle that constitutional issues are so important to be decided unless absoutely necessary to a decision of the case, and are to be avoided if there are grounds for a decision of lesser dimension. *Burton v. United States,* 196 U.S. 283, 25 S.Ct. 243, 49 L.Ed. 482 (1905), *Ashwander v. Tennessee Valley Authority,* 297 U.S. 288, 56 S.Ct. 466, 80 L.Ed. 688 (1936).

3. The Petitioner here will not be precluded from bringing a subsequent appeal of his federal claim if he should lose at a trial on the merits. His federal claim that he was denied his Fourteenth Amendment right to due process will survive even if the trial court enters a judgment against him on state law grounds.

4. The final category of exceptions to the finality rule, as outlined by the *Cox* court, allows the court an opportunity to grant an interim review when postponement of that review would endanger an important national policy, or would cast a shadow upon an established and vital constitutional right. The import of the cases which have been granted an interim review within this category has been that exigent circumstances peculiar to each of those cases necessitated a waiver of the finality rule and was consistent with the pragmatic approach adopted by this Court.

The present case, however, does not contain any of the requisite urgent circumstances which require the grant-

ing of an interim review. No national policy is endangered by the Oklahoma decision, and the postponement of review would not result in a shadow being cast over any important or unsettled constitutional rights. If this Court declines to hear this case, or if the Petitioners should prevail on non-federal grounds at a trial on the merits, thus precluding a subsequent review by this Court, the Oklahoma construction industry will continue to operate in the illuminating light of consistent state and federal judicial interpretatioins that the mechanics' and materialmen's lien laws protecting the common laborer are constitutionally valid and do not constitute a denial of due process to the property owners.[5]

Close examination reveals that not only does this case not fit into one of the exceptions discussed by the *Cox* court, but instead appears to fit more appropriately into that category of cases which support the policy arguments outlined by Justice Frankfurter in *Radio Station WOW,* supra, and *Republic Gas Co.,* supra, for the continued enforcement of the finality rule. The Petitioner is now requesting that this Court upset a decision of the Oklahoma Supreme Court in a matter which will not bear any serious public consequence if review was delayed, and which is purely local in nature.

Mr. Justice Rehnquist, dissenting to the majority's granting of interim review in the *Cox* case, voiced his concern over the growing trend of this court to "construe §1257 so that [this Court] may virtually rush out and meet

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[5] *See generally,* 53 Am. Jur. 2d, Mechanic's Liens, §10 (1970)

the prospective constitutional litigant as he approaches our doors." *Cox Broadcasting Corp.*, supra at 510. At least in that case the majority presented a reasonable argument that a failure to decide the question before the court there "would leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute that the constitutionality of which was in serious doubt. . . " Id. at 486. For this Court to use the rationale supporting the *Cox* decision in order to grant interim review of this case, would all but sound the death knell for the finality rule of §1257.

Inasmuch as this case has been remanded by the Oklahoma Supreme court for a trial on the merits; and inasmuch as such further proceedings will not hinder the Petitioner's opportunity to have his federal claim reviewed by this Court at a later date; and since the circumstances of this case do not represent any urgent circumstances warranting a waiver of the finality rule of §1257, the Respondents respectfully submit that the writ of certiorari requested by the Petitioner should be denied.

II.

The prior decisions of this Court control the federal issues involved here and therefore this case presents no new substantial federal question.

It is an established principle of this Court that when a state court has correctly relied upon a previous decision of this Court in answering a federal question, this Court should not interfere with the state court's decision. *Minneapolis, S.P. & S.S.M.R. Co. v. C. L. Merrick Co.*, 254

U.S. 376, 41 S.Ct. 142, 65 L.Ed.2d 312 (1920); *Utely v. St. Petersburg,* 292 U.S. 106, 54 S.Ct. 593, 78 L.Ed.2d 1155, *reh den* 292 U.S. 604, 54 S.Ct. 712, 78 L.Ed.2d 1466 (1934).

The Oklahoma Supreme Court's holding in this case that the filing of a mechanics' or materialmen's lien was a *de minimus* interference with the use and enjoyment of the debtor's property followed the decision of the Arizona District Court in *Spielman-Fond Inc. v. Hanson's, Inc.,* 379 F.Supp. 997 (D. Ariz. 1973), *aff'd* 417 U.S. 901, 94 S.Ct. 2596, 41 L.Ed.2d 208 (1974).

Petitioners argue that the summary affirmance by this Court of *Spielman-Fond* should not have controlling influence on this case. They rely on the concurring opinion of Chief Justice Burger in *Fusari v. Steinberg,* 419 U.S. 379, 391 95 S.Ct. 533, 42 L.Ed.2d 521 (1975), wherein he indicated that a summary affirmance of a judgment by this Court of a three-judge district court is an affirmance of the judgment but not necessarily the reasoning by which it was reached.

However, subsequent to the *Fusari* decision, this Court addressed itself more directly to the question of the precedential value of summary decisions. In *Hicks v. Miranda,* 422 U.S. 332, 95 S.Ct. 2281, 45 L.Ed.2d 223 (1975), this Court made it clear that the summary affirmance by this Court of a lower federal court decision was a decision on the merits, and lower federal courts were to be bound by that summary affirmance until such time as this Court indicated otherwise. Id. at 344.

Since the Oklahma Supreme Court was presented

with a federal constitutional question in this case, it was bound by precedents established by this Court. The Oklahoma Supreme Court's reliance on *Spielman-Fond* in reaching their decision was required by the *Hicks* ruling.

The *Hicks* court did indicate that the precedential weight afforded a summary decision could be mitigated by the inability of lower courts to accurately ascertain what issues were decided by this Court in a summary decision, or by doctrinal developments occurring subsequent to the summary decision which would necessitate a reevaluation of that authority. Id. at 344.

A comparison of *Spielman-Fond* and the present case reveals no ground for a claim of confusion in the issues decided, and a search of the subsequent cases dealing with the precise issue involved indicates that there has been no substantial doctrinal developments since *Spielman-Fond* that would warrant a reexamination of the issue involved herein.[6]

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[6] State and federal courts upholding the rationale of *Spielman-Fond* since it was decided include: *Silverman v. Gosset*, 553 S.W.2d 581 (Tenn. 1977); *Banker's Trust Co. v. El Paso Pre-Cast Co.*, 560 P.2d 457 (Colo. 1977); *Carl A. Morse v. Rentar Indus. Dev. Corp.*, 391 N.Y.S.2d 42 (N.Y. 1977); *S. Cent. Dist. Pentecostal Church of God of America, Inc. v. Bruce-Rogers Co.*, 599 S.W.2d 702 (Ark. 1980); *Williams & Works, Inc. v. Springfield Corp.*, 265 N.W.2d 328 (Mich. App. 1978); *Tucker Door & Trim Corp. v. Fifteenth Street Co.*, 2 S.E.2d 433 (Ga. 1975); *In re Thomas A. Cary, Inc.*, 412 F.Supp. 667 (E.D. Va. 1976); *B. & P. Development Co. v. Walker*, 420 F.Supp. 704 (W.D. Pa. 1976).

Those cases which have either rejected the de minimus rationale of *Spielman-Fond*, or have otherwise distinguished that case, include: *Connolly Development, Inc. v. Superior Court of Merced County*, 553 P.2d 637 (Cal. 1976) (upholding the California lien laws as constitutional as providing sufficient due process protections); *Roundhouse Construction Corp. v.*

(Continued)

In *Spielman-Fond,* the district court addressed itself to the singular issue of whether the filing of a mechanics' or materialmen's lien constituted a substantial taking of property warranting the constitutional protections of due process, or merely a *de minimus* interference with the owner's use and enjoyment of his property not requiring the full panoply of due process protections. If the district court had found the former to be the case, they would have been required to examine the Arizona statutory scheme to determine if it provided adequate due process protections. However, by adopting the *de minimus* rationale, the court obviated any need for an examination of the statutory scheme. Indeed, nowhere in the *Spielman-Fond* opinion does the court address itself to the particulars of the Arizona statutes.

The only reasonable conclusion that can possibly be reached by examining that decision is that this Court upheld the *de minimus* determination of the Arizona district court. For this Court to have summarily affirmed the district court's judgment on the grounds that the Arizona laws provided adequate due process protection, as the Petitioners hypothesized this Court could have

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(Continued)

Telesco Masons Supplies Co., Inc., 362 A.2d 778 (Conn. 1974) (distinguishing the Connecticut statutor scheme involved from that in *Spielman-Fond*); *Barry Properties, Inc. v. Fisk Bros. Roofing Co.,* 353 A.2d 222 (Md. 1976) (distinguishing the Maryland statutory scheme from that involved in *Spielman-Fond*).

Thus, since 1976, all jurisdictions which have considered the constitutionality of their particular lien laws have held them to be constitutional, and of those, at least seven have adopted the de minimus rationale of the *Spielman-Fond* court.

done, would have necessitated that this Court first reverse the finding made by the Arizona district court of the *de minimus* nature of the taking involved and then affirm the result on grounds which that court never even considered in its decision. Such a convoluted line of reasoning stretches the doctrine of judicial interpretation beyond acceptable limits and would have the effect of leaving any summary decision of this Court bankrupt of meaningful precedential value, a result quite contrary to this Court's statements in *Hicks.*

Inasmuch as the Oklahoma Supreme Court based its decision on the grounds that the filing of a mechanics' or materialmen's lien constituted a *de minimus* interference with the use and enjoyment of property; and since that conclusion was based on this Court's summary affirmance of *Spielman-Fond;* and further, because there has been no indication of new and contrary doctrinal developments dealing with this issue since *Spielman-Fond;* and inasmuch as there is no reasonable doubt concerning the issue decided by *Spielman-Fond;* the Respondents respectfully submit that this Court is bound by the summary affirmance of that case and that the writ of certiorari requested by the Petitioners should be denied.

III.

The decision of the Oklahoma Supreme Court rests on adequate state grounds and therefore precludes a reexamination of the issues involved by this Court.

When a decision by a state court could have been

decided on either state or federal grounds, this Court will not interfere with that decision if it is supported by adequate state grounds. *Minnesota v. National Tea Co.*, 309 U.S. 551, 60 S.Ct. 676, 84 L.Ed. 920 (1940); *Jankovich v. Indiana Toll Road Commission,* 379 U.S. 487, 85 S.Ct. 493, 13 L.Ed.2d 439 (1965).

In the present case, the original Order entered by the trial judge granting the Petitioner's motion for a summary judgment declared that the Oklahoma lien laws in question were repugnant to both the Oklahoma constitution and the federal constitution.[7] The subsequent reversal by the Oklahoma Supreme Court stated that those laws were not repugnant to either the state or federal constitutions.[8]

In such circumstances, where the state court decision rests on similar provisions of either the state or federal constitutions, this Court has stated that the state constitutional provision can provide an independent and adequate ground for the decision, thus denying this Court jurisdiction to review the state judgment. *Jankovich,* supra at 489.

This Court was faced with a similar situation in *Roundhouse Construction Corp. v. Telesco Masons Sup-*

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[7] *Layon v. First National Bank of Tulsa,* No. C-75-1071 (D.C. Tulsa County, State of Oklahoma, July 18, 1977). The trial judge in granting the Petitioner's pretrial Motion for a summary judgment, stated that "[The Oklahoma] statutes are unconstitutional and void because they fail to provide due process of law as required by the Fourteenth Amendment of the United States Constitution *and* Article 2, Section 7 of the Oklahoma Constitution." (Emphasis added). *See* Petition for Writ of Certiorari, App. F at 2, *Mobile v. Layon,* 653 P.2d 591 (1980).

[8] *See* Petition for Writ of Certiorari, App. A at 16, *Mobile v. Layon,* 653 P.2d 591 (1980). *See* Note 6, supra at 18, for state and federal cases in accord.

plies Co., Inc., 168 Conn. 371, 362 A.2d 778 (1975). There, a decision by the Connecticut Supreme Court invalidating that state's mechanics' and materialmen's lien laws was appealed to this Court, and was subsequently vacated and remanded to the Connecticut court for a determination of whether it based its decision on provisions of the state or federal constitution. 423 U.S. 809, 96 S.Ct. 20, 46 L.Ed.2d 29 (1975). At the rehearing, the Connecticut Supreme Court stated that its decision was based on state and federal grounds. 170 Conn. 155, 365 A.2d 393 (1976). A subsequent petition for writ of certiorari was denied by this Court on the grounds that the Connecticut decision was based on adequate state grounds. 429 U.S. 889, 97 S.Ct. 246, 50 L.Ed.2d 172 (1976).

The general rule that has evolved from these decisions is that absent an indication that the state court's decision was based specifically on federal provisions, or that the state and federal grounds are so interwoven that the Court cannot conclude that the judgment rests on independent state grounds, then this Court should decline to review a state court's decision. *Jankovich,* supra at 491-492.

Inasmuch as a decision of the Oklahoma Supreme Court in this case rests adequately on provisions of the Oklahoma Constitution; and since the Oklahoma Supreme Court did not rely on provisions of the federal constitution in reaching their decision; the Respondent respectfully submits that the decision of the Oklahoma Supreme Court rests on adequate state grounds, and therefore Petitioner's request for a writ of certiorari should be denied.

CONCLUSION

This Respondent respectfully submits that this Court lacks jurisdiction to review this case at this time.

There has been no final decision in this case as required by 28 U.S.C. §1257. The Oklahoma Supreme Court has remanded this case to the trial court for proceedings on the merits, and the Petitioners could prevail therein on non-federal grounds.

Also, the issue involved in this case does not present any new or substantial federal question for this Court to resolve. This Court has settled that issue in its summary affirmance of *Spielman-Fond,* and in the absence of any doctrinal developments subsequent to that decision, the Oklahoma Supreme Court's reliance on that decision when considering a federal question is not misplaced.

Finally, the decision of the Oklahoma Supreme Court rests on adequate state grounds precluding a review by this Court. The Oklahoma Supreme Court's opinion is based on provisions of the Oklahoma Constitution as well as the federal constitution, and that court did not rely on any specific provisions of the federal constitution in reaching its decision.

In light of all the foregoing, Respondent submits that Petitioner's request for a writ of certiorari should be denied.

Wesley R. Thompson
Thomas A. Layon
15 South Park
Sapulpa, Oklahoma 74066

Attorneys for Respondent
Verlee C. Layon